

**TERMINAL DISCLAIMER TO OBLIVIATE A DOUBLE  
PATENTING REJECTION OVER A PRIOR PATENT**

Docket No. 97,022-G1

In Re Application of: Dunlay et al.

Application No.: 09/721,168

Filed: 11/22/00

For: A System for Cell-Based Screening

The owner\*, Carl Zeiss Jena GMBH, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173 as shortened by any terminal disclaimer, of prior Patent No. 6,620,591. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of any prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1.  For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2.  The undersigned is an attorney or agent of record.

Terminal disclaimer fee (\$ \_\_\_\_\_) under 37 CFR 1.20(d) is included.

Name	McDonnell Boehnen Hulbert & Berghoff
Address	32 <sup>nd</sup> Floor, 300 South Wacker Drive
City, State, Zip	Chicago, Illinois 60606
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED	
Name / Reg. No.	David Harper 42,636
Signature	
Date	July 7, 2004

\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).

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Hon. Commissioner of  
Patents and Trademarks

S/N 09/721,168

Atty DSH:dr

Re: Applicant - R. Terry Dunlay, et al.

Case No. 97,022-G1

### A System for Cell Based Screening

Sir:

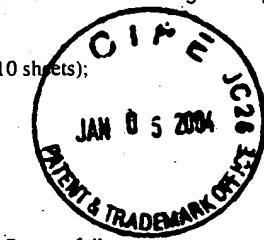
Please place the Patent Office receipt stamp hereon and mail to acknowledge receipt of:

- Transmittal Letter (1 sheet, in duplicate);
- Response to Office Action mailed October 3, 2003 (10 sheets);
- Supplemental IDS Form (4 sheets);
- Supplemental IDS 1449 Form (1 sheet);
- 7 cited References for U.S. Serial No. 09/721,168.
- Return receipt postcard

Fee enclosed:

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Respectfully,  
McDonnell Boehnen Hulbert & Berghof  
Attorney for Applicant

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